Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling and	)	**CC Docket 97-90**
Contingent Petition for Preemption	)	**CCB/CPD 97-12**
On Interconnection Cost Surcharges	)	

OPPOSITION OF ALIANT COMMUNICATIONS CO.

Aliant Communications Co. ("Aliant"), by its attorneys, hereby submits this Opposition to the Petition for Declaratory Ruling and Contingent Petition for Preemption on Interconnection Cost Surcharges ("Petition") filed by Electric Lightwave, Inc., McLeodUSA Telecommunications Services, Inc., and Nextlink Communications, L.L.C. ("Petitioners"). These Petitioners seek a Declaratory Ruling preempting state commissions from imposing interconnection cost surcharges. The Commission's recent Public Notice[1] requests public comment on the Petition, and Aliant appreciates the opportunity to provide its views.

Aliant has two fundamental objections to Petitioners' requests. First, the validity and appropriateness of interconnection cost surcharges as a cost recovery mechanism are decisions which *should* rest with state commissions. A Declaratory Ruling such as that sought by the Petitioners would strip state commissions of the ability to decide this policy issue and would handcuff state commissions in their efforts to develop workable and feasible rules for interconnection and cost recovery.

---

[1] *Public Notice*, DA 97-469 (March 4, 1997).

Second, the Petitioners are creatively stretching the actual scope of Section 252(d) and Section 253 of the 1996 Telecom Act to fit their own purposes. The Petitioners state that Section 252(d) prohibits recovery of the costs associated with the upgrading and rearranging of an incumbent LEC's network to fulfill its interconnection obligations. That is, to say the least, an extremely self-serving reading of Section 252(d). Petitioners' conclusion that interconnection cost surcharges constitute a barrier to entry prohibited by Section 253 is also not well founded. Section 253(d), under which such barriers are prohibited, grants the Federal Communications Commission ("Commission") only the authority to preempt *enforcement* of a statute, regulation, or legal requirement *already imposed* by a state or local government. Section 253 does not grant the power of prior restraint requested by the Petitioners, under which the Commission can prohibit the passage of any broad policy category which might be viewed as a barrier to entry. The remedy created under Section 253 is clearly designed to address specific policies already enacted, with the Commission examining the specific circumstances, legislative and regulatory intent, and policy decisions involved. No such examination can take place under the scenario envisioned by the Petitioners.

Aliant sees a parallel between the action sought by the Petitioners in this proceeding and the basis for the U.S. Court of Appeals for the 8th Circuit's stay of the unbundled element pricing rules.[2] In both instances, the paramount issue is not the logic or validity of the policy decision, but rather a jurisdictional question over the proper role of state commissions.

Prior to the stay issued by the Eighth Circuit, Aliant worked diligently to model its network costs using the forward-looking long-run incremental cost structure imposed by the

---

[2] *Iowa Public Utilities Commission v. the Federal Communications Commission.*

Commission. Since the stay, Aliant has continued to do so. The difference, however, is that Aliant is now able to engage in a dialogue with a state commission that enjoys some degree of flexibility and policy making ability. The state commission is able to examine and consider the individual circumstances and market conditions involved, and develop network pricing rules accordingly. Aliant fully expects these rules to employ many of the concepts embraced in the original Commission order, but feels that active involvement by the state commission will contribute to a more equitable and feasible result.

Similarly, Aliant feels that by issuing the Declaratory Ruling sought by the Petitioners, the Commission would reduce state commissions' ability to develop appropriate rules for network cost recovery. While Aliant certainly does not agree with all the arguments raised in the Petitioners' multifaceted attack against ICAM surcharges, Aliant certainly respects the Petitioners' right to raise such issues before *state commissions*. Unfortunately, the Petitioners do not want to extend that same opportunity to incumbent LECs. Instead, the Petitioners seek to block, on a nationwide basis, incumbent LECs' ability to pursue cost recovery policies with their state commissions.

If the Petitioners had limited their arguments against ICAM surcharges to the issue of incumbent LECs' ability to recover network conversion costs from competing LECs, their proposal would not carry such far-reaching and troublesome policy implications. However, the Petitioners also seek to block the ability of incumbent LECs to recover *any* such cost from end users. It is particularly inappropriate for the Petitioners to lump end user-based cost recovery into their "barrier-to-entry" argument. Aliant asserts that recovery of network conversion costs from *competing LECs* is not a cut-and-dried barrier to entry as stated by the Petitioners, but the

Petitioners make absolutely no logical arguments for labeling *end user* cost recovery as a barrier to entry. Injection of end user cost recovery into a Section 253 debate strikes Aliant as a shot-in-the-dark which, if embraced by the Commission, will leave all telecommunications providers at a loss to determine methods for proper cost recovery. After all, costs are ultimately borne by end users no matter how the cost recovery mechanism is packaged. The Petitioners' position seems to be that information concerning the costs of network conversion should be *shielded* from the end user, yet they know that the end user will ultimately pay. Perhaps the Petitioners' primary concern is that the incidence of network conversion costs be veiled so that end users do not recognize the fact that they are paying such costs. Aliant feels very strongly that such a strategy violates the spirit of competitive markets, in which consumers are to fully grasp the selection, prices, and costs of the services involved. Aliant's desire to fully inform consumers of the charges incurred is not limited to this proceeding, but extends to other important issues such as number portability and universal service funding.

The Petitioners also raise the obscure argument that any incumbent LEC network conversion costs recovered from a competing LEC ought to, in turn, entitle the competing LEC to recover its network conversion costs from the incumbent LECs. The Petitioners apparently fail to see the distinction between reaching one's customer and accommodating one's competitor. Incumbent LECs have already paid for the facilities necessary to connect their own customers to the network, and paid to upgrade these facilities, and paid the cost of repair and maintenance. The Petitioners, or any other competing LEC, are free to do the same - a fact that the Petitioners conveniently ignore. Instead, the vast majority of competing LECs are choosing interconnection as their route to the customer. While this choice is available to the Petitioners under the 1996

Telecom Act, the Petitioners should not be insulated from bearing any of the network conversion costs involved.

In conclusion, Aliant wishes to reemphasize both its jurisdictional and policy concerns regarding the above petition. Aliant asks that the Commission deny Petitioners' request, and allow the policy questions involved to be determined by the state commissions.

Respectfully submitted,

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins, L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
(202) 639-6755
Counsel for Aliant Communications Co.

April 3, 1997